

Message Text

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DRAFTED BY L:L/PM:JAMES H. MICHEL:EDK

APPROVED BY L:L/PM:JAMES H. MICHEL

AIR FORCE JAG - COL. MAZZA

JUSTICE - MR. RISTAU

EUR/NE - MR. WORREL

PM/ISO - MR. HAGERTY

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FM SECSTATE WASHDC

TO AMEMBASSY LONDON

UNCLAS STATE 130544

E.O. 11652:N/A

TAGS: LITI, MILI

SUBJECT: FOREIGN LITIGATION -- BRINDLE V. UNITED STATES

REF : 2 FAM 284

1. DEPARTMENT HAS BEEN INFORMED BY DEPARTMENT OF JUSTICE THAT SUMMONS AND COMPLAINT IN SUBJECT LAWSUIT WAS PROFFERED TO EMBASSY ON JUNE 3. ACCORDING TO INCOMPLETE INFORMATION AVAILABLE TO DEPARTMENT OF JUSTICE, SUIT INVOLVES PETITION FOR INTERLOCUTORY INJUNCTION TO RESTRAIN U.S. ARMED FORCES FROM TAKING PLAINTIFF INTO CUSTODY AS DESERTER. JUSTICE DEPARTMENT UNDERSTANDS THAT CASE INVOLVES INTERPRETATION OF UK VISITING FORCES ACT, WHICH IS SIMULTANEOUSLY UNDER REVIEW BY APPELLATE COURT IN SEPARATE PROCEEDING, TO WHICH USG IS NOT RPT NOT A PARTY, BROUGHT BY BRINDLE AGAINST BRITISH PENAL AUTHORITIES.

2. DEPARTMENT UNDERSTANDS THAT UNDER BRITISH JUDICIAL PRACTICE, WHEN SUMMONS IS PROFFERED TO FOREIGN SOVEREIGN THROUGH ITS DIPLOMATIC MISSION, FOREIGN SOVEREIGN HAS OPTION OF DECLINING TO ACCEPT SERVICE (IN WHICH CASE COURT WILL DECLINE TO EXERCISE JURISDICTION) OR ACCEPTING UNCLASSIFIED

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SERVICE AND ASSERTING APPROPRIATE DEFENSES, INCLUDING

SOVEREIGN IMMUNITY, BEFORE BRITISH COURT.

3. IF INFORMATION SET OUT IN FOREGOING PARAGRAPHS IS

ACCURATE, EMBASSY SHOULD DECLINE TO ACCEPT SERVICE IN THIS CASE. IN THIS REGARD REFUSAL TO ACCEPT SERVICE SHOULD BE PREDICATED UPON USG DESIRE TO AVOID INVOLVEMENT IN JUDICIAL EXAMINATION OF VISITING FORCES ACT. MATTER AT ISSUE IS ESSENTIALLY INTERNAL UK QUESTION WHICH IS CURRENTLY BEING LITIGATED IN SEPARATE PROCEEDINGS IN WHICH HMG IS REPRESENTED AND USG IS NOT RPT NOT A PARTY. PRESUMABLY, ISSUE WILL BE PUT TO REST IN THAT SEPARATE LITIGATION. FURTHER GROUND FOR DECLINING TO ACCEPT SERVICE IS THAT SUIT WOULD NECESSARILY INVOLVE EXAMINATION OF INTERNAL FUNCTIONS OF U.S. ARMED FORCES, AN INAPPROPRIATE SUBJECT FOR JUDICIAL REVIEW BY A FOREIGN COURT.

4. EMBASSY SHOULD BE AWARE THAT US PRACTICE UNDER RESTRICTIVE THEORY OF SOVEREIGN IMMUNITY MIGHT NOT RPT NOT PERMIT COMPARABLE PROCEDURE IN EVENT OF ANALOGOUS SUIT AGAINST HMG IN US COURT. ACCORDINGLY, IN DECLINING SERVICE OF PROCESSES NO RPT NO ASSURANCES OF RECIPROCITY CAN BE OFFERED.

5. REQUEST EMBASSY REPORT IN ACCORDANCE 2 FAM 284.3. KISSINGER

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